IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4730 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HASMUKHBHAI C SHAH

Versus

STATE OF GUJARAT

Appearance:

MR MIHIR THAKORE for MS MEGHA JANI for Petitioner

MR ND GHOIL, APP for Respondent No. 1

TANNA ASSOCIATES for Respondent No. 2 (absent)

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 15/06/2001

ORAL JUDGEMENT

#. The applicant-accused has filed this application under Section 482 of Criminal Procedure Code for quashing

criminal complaint being Criminal Case No.262 of 1995 filed by the respondent No.2 - complainant before the court of learned Metropolitan Court No.9, Ahmedabad and prayed that the said complaint be quashed.

#. As per the complaint, the accused gave cheque bearing No.017358 dated 16.12.1994 worth Rs.10,00,000/= (Rupees Ten Lakhs) towards payment of outstanding tax amount to the Corporation. But the said cheque was bounced back on 20.12.1994. Therefore, after issuing notice on 22.12.1994 the complaint was filed by the respondent No.2 complainant directly before the court of Metropolitan Magistrate on 21.1.1995.

#. Initially, notice was ordered to be issued to the respondents and after hearing the learned counsel for the parties on 10.1.1997 Rule was issued in this matter making it returnable on 28.2.1997 28.2.1997 and interim relief in terms of para 10(B) was granted in favour of accused. Thereafter, the matter was adjourned from time to time on different occasions by different Hon'ble Judges. Today it is listed for 43rd time but so far no reply is filed to this application nor any one appeared for the respondent No.2-complainant. Mr.N.D.Gohil, learned APP appears for the respondent No.1-State.

#. Learned senior counsel Shri Mihir Thakore for the accused-applicants submitted that the accused was required to pay Rs.30,00,000/= (Rupees Thirty Lakhs) by way of tax to the respondent No.2-Corporation for which he had already paid three cheques of Rs.10,00,000/- each. First cheque of Rs.10,00,000/- was already honoured, however, other two cheques of Rs.10,00,000/= each were bounced back but the entire amount of Rs.20,00,000/- was paid by the petitioner between 11.1.1995 to 15.4.1995 in different installments which has been mentioned at page 5 of this petition. The averments made in this application on oath have not been controverted.

#. Under the circumstances, there is no reason to keep the complaint alive filed by respondent No.2 against the accused for the offences punishable under Section 138 of the Negotiable Instrument Act.

#. In view of the above discussion, this petition is allowed. The impugned criminal complaint being Criminal Case No.262 of 1995 pending before the court of Metropolitan Court No.9, Ahmedabad filed by the respondent No.2 against the present applicant-accused is hereby quashed. Rule is made absolute.

(B.J.Shethna, J.)

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